IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RSA 192 of 1995.

Date of decision May 17, 2007.

Shri Kishan Chand @ Kishna ……Appellant.

Versus

Mohinder Paul and others ……Respondents.

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the appellant: **Mr. H.K.Bhardwaj, Advocate.**

For Respondents 1 to 4: **Mr. N.K.Thakur, Advocate.**

Dev Darshan Sud, J. (Oral).

This appeal has been instituted by the appellant – defendant against the judgment and decree of the learned District Judge whereby appeal filed by him has been dismissed and the judgment and decree in favour of respondents-plaintiffs prohibiting the appellant – defendant from interfering or taking forcible possession of the suit land has been affirmed by the learned appellate Court.

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[1] ***Whether reports of Local Papers may be allowed to see the judgment?***

Learned counsel appearing for the appellant has drawn my attention to the substantial questions of law formulated and filed with the grounds of appeal. He submits that question No. 4 may be allowed to be urged, as a ground to test the legality of the judgment. Question No. 4 is to the effect as to whether judgment of lower appellate Court was non-speaking one, if so, its effect.

I have heard the learned counsel for the parties and gone through the record.

On question No. 4 which is allowed to be urged by the appellant as substantial question of law, I find that the judgment of the learned appellate Court is cryptic, brief and does not in any manner assign reasons for reaching the conclusions or deciding the grounds which have been urged by the appellant-defendant before it.

In Madhukar and others v. Sangram and others (AIR 2001 SC 2171), the Hon'ble Supreme Court has held that first appeal is a valuable right and it is mandatory for the appellate Court to deal with all issues and evidence led by the parties. The Hon'ble Supreme Court held as under:

> **"……..Sitting as a Court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.**

It has failed to discharge the obligation placed on a first appellate Court. The judgment under appeal is so cryptic that none of the relevant aspects have even been noticed. The appeal has been decided in a very unsatisfactory manner. First appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings.

6. In Santosh Hazari v. Purushottam Tiwari (Dead) by L.Rs. (2001) 2 JT (SC) 407: (2001 AIR SCW 723) this Court opined (Para 15 of AIR):

"The Appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rearing both on questions of fact and law. The judgment of the Appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising alongwith the contentions put forth, and pressed by the parties for decision of the Appellate Court."

……..

……..

While reversing a finding of fact the Appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the First Appellate Court had discharged the duty expected of it."

7. The salutary principles referred to above in Santosh Hazari's case (2001 AIR SCW 723) (supra) have been respected in their breach."

In State of Rajasthan v. Harphool Singh (Dead) through his LRs (2000) 5 SCC 652, it was held that there has to be due and proper application of mind while deciding an appeal by the first appellate Court. The relevant observations of the Hon'ble Supreme Court are extracted hereunder:

"Aggrieved, the State pursued the matter in appeal before the first appellate court but we find on a close scrutiny of the judgment that there was no due or proper application of mind or any critical analysis or objective consideration of the matter made, despite the same being the first appellate court. On the other hand, by merely reproducing the findings of the nature adverted to by us, a mechanical affirmation seems to have

> **been made of them without any reference to the principles of law or the criteria to be satisfied before the claim of the plaintiff of perfection of title by adverse possession could be sustained, involving correspondingly destruction of title of the State in respect of a public property……..”**

To similar effect is another judgment of the Hon’ble Supreme Court in United India Insurance Co. Ltd. V. Kanwal Nain Sachdeva and others (1999) 9 SCC 193. Para 3 of the judgment is relevant which is reproduced hereunder:

> **“ 3. The High Court dismissed the appeal by a cryptic order stating that no case had been made out for interfering in the well-reasoned award of the Motor Accident Claims Tribunal. In our opinion, the High Court ought to have discussed the merits of the contentions raised by the Insurance Company especially when it was dealing with the first appeal against the order of the Tribunal.”**

The first appellate Court is the final Court of fact and it is incumbent upon it to consider the entire matter on law and facts. In the present appeal, I

do not find that the learned Appellate Court having undertaken any such exercise. It was duty bound for the Court to have considered the evidence and the law in detail as also the grounds of appeal urged by the appellant. In the circumstances, this appeal is allowed. Question No. 4 in the grounds of appeal is answered in favour of the appellant. The judgment and decree of the learned appellate Court is quashed and set aside. The matter is remanded to the learned District Judge for decision afresh in accordance with law. Parties will appear before the learned District Judge on 28.6.2007. The learned District Judge will dispose of the entire appeal on or before 31.12.2007. The record of the Courts below be sent back forthwith. There shall be no order as to costs.

May 17, 2007 (PC). (Dev Darshan Sud), J.